

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Cecilia Tillman,

Plaintiff,

v.

Case No. 11-10994

Macy's Inc.,

Honorable Sean F. Cox

Defendants.

ORDER ADJOURNING HEARING
ON DEFENDANT'S MOTION TO COMPEL ARBITRATION
AND ORDERING SUPPLEMENTAL BRIEFING

On September 29, 2011, this Court held a hearing on Defendant's Motion to Compel Arbitration. As stated on the record this date, after the parties completed the briefing on that motion, the United States Court of Appeals for the Sixth Circuit decided *Hergenreder v. Bickford Senior Living Group, LLC*, __ F.3d __, 2011 WL 3805613 (6th Cir. August 30, 2011). Based upon this Court's reading of that decision, the Court concludes that supplemental briefing is necessary.

The Court **ORDERS** Defendant to file, no later than **October 14, 2011**, a supplemental brief of no more than 12 pages that addresses the following:

- 1) Defendant shall specify the following:
 - a) the alleged "offer" that was made to Plaintiff (i.e., which written document contains or constitutes the alleged "offer");
 - b) when Plaintiff received that alleged offer and the evidence in the record establishing that Plaintiff received that alleged offer;
 - d) whether Plaintiff was required to read the document that contained

or constitutes the alleged offer; and

- e) how and when Plaintiff “accepted” the alleged offer.
- 2) Can Defendant direct the Court to any Michigan or Sixth Circuit authority that supports Defendant’s contention that Plaintiff assented to arbitration by not returning an opt-out form (i.e., by silence or inaction)?
- 3) The plaintiff in *Hergenreder* opposed the motion to compel arbitration, arguing that she did not agree to arbitration and that she did not agree to waive her right to a jury trial. The Sixth Circuit concluded that the plaintiff did not enter into an arbitration agreement under Michigan law and, that *even if she did*, the plaintiff did not knowingly and voluntarily waive her right to a jury trial under federal law. As the Court reads her *pro se* responses, Ms. Tillman makes both of those arguments in this action. In light of *Hergenreder*, Defendant shall respond to Ms. Tillman’s argument that she did not agree to waive her right to a jury trial.

IT IS FURTHER ORDERED that Plaintiff may file, no later than **October 21, 2011**, a brief of no more than 12 pages that responds to Defendant’s supplemental brief.

IT IS FURTHER ORDERED that the hearing on Defendant’s Motion to Compel Arbitration shall be ADJOURNED until **November 15, 2011, at 2:00 p.m.**

IT IS SO ORDERED.

Dated: September 29, 2011

S/ Sean F. Cox
Sean F. Cox
U. S. District Court Judge

I hereby certify that on September 29, 2011, the foregoing document was served upon counsel of record by electronic means and upon Cecilia Tillman by First Class Mail at the address below:

Cecilia Tillman
7000 W. Parkcrest Drive, Apt. 102
Westland, MI 48185

Dated: September 29, 2011

S/ Jennifer Hernandez
Case Manager